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Supreme Court of the United States

OCTOBER TERM, 1948

No. 505

ANTONIO CORRADO,

Libelant-Appellee,

—against—

PENNSYLVANIA RAILROAD COMPANY,

Respondent-Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

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Supreme Court of the United States

OCTOBER TERM, 1948

No. .....

ANTONIO CORRADO,
Libelant-Appellee,

—against—

PENNSYLVANIA RAILROAD COMPANY,
Respondent-Appellant.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, the Pennsylvania Railroad Company, a corporation organized and existing by virtue of the laws of the State of Pennsylvania, respondent-appellant, above named, respectfully prays that this Honorable Court in the exercise of its supervisory powers issue a writ of certiorari in this action to the United States Court of Appeals for the Second Circuit, to the end that this Honorable Court may review the final decree and the decision of that court, made and entered in this action on November 29, 1948, whereby said Court affirmed the final decree in admiralty of the United States District Court, Eastern District of New York, made and entered in the action on May 21, 1948, wherein it was

adjudged that Antonio Corrado, libelant-appellee, above named, have and recover of your petitioner the sum of $18,817.75.

The Facts

The decree affirmed by the Court of Appeals in this case was entered in the action following a trial in the District Court of the issues created by the pleadings. The action was a libel in personam and was instituted by libelant against petitioner for the purpose of compelling petitioner by judicial process to pay him a sum of money in the amount of $50,000.00, or such part thereof as the Court might direct, to indemnify him in full for personal injuries he had sustained under circumstances which, as he asserted, rendered petitioner liable to him.

The libelant, as it appears from the pleadings and the evidence in the case, was accidentally injured while he was aboard a car float (a vessel as defined in 1 United States Code, Sec. 3 and R. S. 3) owned by petitioner. The vessel, a few hours before the accident, had been loaded with cargo, consisting of ten freight cars containing merchandise, at Jersey City, New Jersey. Thereafter, the float with her cargo was transported across the Hudson River by the use of one of petitioner's tug boats and then was moored to Pier 29, location of which was near the foot of Desbrosses Street, New York, New York. Shortly after the mooring had been made, petitioner, in accordance with a contract previously entered into, surrendered possession of the float to a stevedoring contractor, the Penn Stevedoring Company, libelant's employer, for the purpose of having the merchandise unloaded from the freight cars as they stood on the float to a platform on the float and thence to the adjoining pier.

Libelant, along with three of his fellow-workers, was assigned by his employer the task of unloading one of the freight cars of the merchandise therein and depositing it on the pier. After libelant and his fellow-employees had been at their task for about an hour, someone, whose identity is not revealed, told libelant to open the door on the offshore side of the car in order to obtain more light and better circulation of air in the car. Accordingly, libelant went outside of the car to open the door and as he was breaking the seal on the lock of the door, he observed that the top of the door bulged out from the side of the car about an inch. After he had broken the seal and removed an iron pin from the lock, he took hold of a handle located near the middle of the door and began pulling on the door to slide it open. When he had moved it about two inches the door toppled over and fell upon him causing him to sustain personal injuries.

Petitioner made no point in either of the Courts below as to the nature and extent of libelant's injuries and, accordingly, makes no point of them in this petition.

The Decisions of the Courts Below

The District Court decided that libelant was entitled to indemnity in full, without mitigation, for the personal injuries sustained by him upon grounds as follows: First, that such injuries had been caused by unseaworthiness of the vessel. Second, that such injuries had also been caused by negligence for which petitioner was responsible. Third, that such injuries had been caused without any contributory negligence on the part of libelant. The Court of Appeals, upon the appeal, sustained the decision of the District Court as to the second and third of the foregoing grounds but declined to sustain the decision as to the first.

Jurisdiction

This Honorable Court now has the power of unrestricted review of cases in the Court of Appeals either before or after rendition of judgment or decree, brought up on certiorari (28 United States Code, Sec. 1254(1), effective September 1, 1948).

The Question Presented

The question of Federal law here presented is as follows:

> Can a stevedore who has accidentally sustained personal injuries on board a vessel in navigable waters in the performance of his work, under circumstances involving no unseaworthiness of the vessel or her appliances, lawfully obtain indemnity from the owner of the vessel upon the ground that such injuries were caused by the negligence of the owner, his agents or servants?

Reasons for Allowance of the Writ

The decision of the Court of Appeals in this case is in sharp conflict with the settled principle of the maritime law that, other than for maintenance and cure, a seaman who accidentally sustains personal injuries on board a vessel in navigable waters, regardless of the cause of the accident, whether from negligence or some other cause, is without a remedy against the owner of the vessel, unless such injuries are caused by unseaworthiness of the vessel or her appliances. (*The Osceola*, 189 U. S. 158, 175; *Chelentis* v. *Luckenbach S. S. Co.*,

247 U. S. 372, 380; *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255, 258; *Cortes* v. *Baltimore Insular Lines,* 287 U. S. 367, 370; *Warner* v. *Goltra,* 293 U. S. 155, 158.) In this case the Court of Appeals, although correctly declining to recognize that libelant's injuries had been caused by any unseaworthiness of the vessel or her appliances, nevertheless permitted a recovery of indemnity upon the ground that libelant's injuries had been caused by negligence for which petitioner was responsible, a ground utterly foreign to the maritime law as a basis for determining the rights and liabilities between a seaman and the owner of the vessel when the former has sustained personal injuries on board such owner's vessel.

It seems clear from the decisions of this Honorable Court, particularly from the recent decision in the case of *Seas Shipping Company* v. *Sieracki,* 328 U. S. 85, that the foregoing principle of the maritime law applies to all seamen alike, regardless of whether they are employed directly by the owner of the vessel on which the injury occurs or, as the libelant here was employed, by an independent contracting stevedore. Furthermore, it seems abundently clear that if the principle applies to a seaman employed by an independent contracting stevedore for the purpose of determining whether or not he is entitled to indemnity from the owner of the vessel for injuries allegedly caused by unseaworthiness, it likewise applies in determining whether or not he is entitled to indemnity from the owner for such injuries allegedly caused by the negligence of the owner, his agents, or servants. The fact that in the one situation (unseaworthiness) he is entitled to maintenance and cure plus indemnity while in the other (negligence) he is entitled to maintenance and cure and no indemnity, in no way makes the principle less applicable in the one situation than in the other.

Furthermore, the relationship of shipowner and seaman, where the latter is on board the owner's vessel as his business invitee, has certain peculiarities which have given to the seaman a somewhat different degree of protection than that which is given to other classes of business invitees of such owner. In some particulars the protection is greater; in others, less. Whenever the relation of shipowner and seaman exists it seems clear that the rights and liabilities of the parties, with respect to personal injuries sustained by the seaman, are to be determined by the law applicable to that relationship and not upon the basis of any relationship existing between the seaman and anyone else. The Court of Appeals in this case, contrary to the holding in the *Seas Shipping Company* case, based its decision not upon the relation of shipowner and seaman, which existed between petitioner and libelant in this case, but rather upon the relation between shipowner and a business invitee other than a seaman.

Clearly the libelant in this case is not entitled to obtain indemnity for his injuries upon the basis that they had been caused by negligence for which petitioner was responsible. Beyond maintenance and cure, libelant has no remedy against petitioner. If so, then the Court of Appeals fell into serious error in this case, an error which, if permitted to stand without correction, will not only result in a grave injustice in this case, but, as a precedent, will result in injustices in many other cases.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Second Circuit commanding that Court to send to this Honorable Court for its review and determination the full and complete transcript

of the Record and all proceedings in this case, so that said final decree of said Court of Appeals in this case may be reversed by this Honorable Court or that your petitioner may have such other, further and different relief in the premises as to this Honorable Court may seem meet and just.

THE PENNSYLVANIA RAILROAD COMPANY, *Petitioner*,

By

MARION H. FISHER,

Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1948

ANTONIO CORRADO,
Libelant-Appellee,

—against—

PENNSYLVANIA RAILROAD COMPANY,
Respondent-Appellant.

BRIEF OF PETITIONER IN SUPPORT OF ITS APPLICATION FOR A WRIT OF CERTIORARI

Statement

The action herein is a libel in personam and was brought in admiralty in the United States District Court, Eastern District of New York, by the libelant to recover a sum of money from petitioner to indemnify libelant for personal injuries allegedly sustained by libelant when he was accidentally struck by the door of a freight car while libelant was on board a car float engaged in unloading the float of cargo as she was in navigable waters of the Hudson River, moored to Pier 29, near the foot of Desbrosses Street, New York, New York (R. 2-6). The action was tried in said District Court and upon the completion of the trial a decree was entered in the action in favor of libelant and against petitioner in the sum of $18,817.75 (R. 81).

Thereafter, the case was appealed by petitioner to the United States Court of Appeals for the Second Circuit where the aforesaid decree was affirmed (R. 95).

Facts

On the morning of September 5, 1946, petitioner caused one of its barges or car floats, loaded with freight cars, to be moved across the Hudson River from the New Jersey side to the New York side by means of one of its tugboats. The vessel, when it arrived on the New York side of the river, was moored on the north side of Pier 29. Most of the freight cars aboard the vessel were loaded with freight which was to be moved therefrom while the cars themselves remained on the vessel (R. 28). There were two sets of tracks on the vessel, one set on the starboard side and the other on the portside. There were five cars on each set of tracks or, altogether, ten cars on board (R. 34). Sometime during the morning after the mooring had been made, the petitioner for the purpose of having the cars unloaded surrendered possession of them to the Penn Stevedoring Company, all pursuant to a contract previously entered into between petitioner and said Penn Stevedoring Company (R. 28). All that petitioner did with respect to the unloading operations was to indicate to the stevedoring company the cars that were to be unloaded (R. 29). The petitioner in no way participated in the work.

The libelant was employed by the Penn Stevedoring Company and, on the morning of September 5, 1946, about 8 o'clock, he began his work on Pier 29. At 10 o'clock he was directed by his boss to go aboard the

aforesaid vessel to unload freight from one of the cars aboard (R. 33). There were three or four fellow-workers with him (R. 34). The particular car to be unloaded was located on the offshore end of the vessel and it was the last car on that end (R. 34). Someone opened the door of the car on the platform side and libelant began to unload the freight consisting mainly of boxes of fruit (R. 35). Petitioner had worked there about an hour (R. 35) when someone asked him to open the car door on the offshore side (R. 36). Prior thereto libelant had observed light coming through at the top of that door (R. 43). When libelant went around the freight car on the outside to open the door and as he was in the act of breaking the seal on the lock, he noticed that the top of the door in part extended outwards about an inch from the side of the car (R. 37). When he had broken the seal and removed the bolt from the lock, he placed his hands on the handle located in the middle of the door and pulled the door (R. 37). When he had pulled the door about two inches, the door fell outwards from the top and struck him causing him to fall into the river (R. 38). After being submerged for sometime, he managed to grasp a line which had been thrown to him by his fellow-workers, after which he was removed from the water (R. 38).

The libelant, at the time of the accident, was approximately 65 years of age (R. 31). He had worked as a stevedore for some 13 or 14 years (R. 39). After the accident, he received medical treatment in various hospitals. From the time of the accident to the time of the trial he had earned no money (R. 42). He received Workmen's Compensation for about 14 months, after which the payments were stopped (R. 42). Examination a short time after the accident disclosed a frac-

ture of the 12th dorsal vertebra. Shortly after the accident, libelant also suffered an attack of pneumonia (R. 45).

Robert Green, libelant's foreman, was called by petitioner. He testified that he had known libelant for about 12 years (R. 60). He said he was present at the time the freight car was being unloaded and that he had observed that the door, which later fell upon libelant, was partially unfastened at the top and the only thing holding it to the side of the car was the hasp on the door with the seals in it (R. 62). He said he told the men working in the car, among whom was the libelant, not to open the door (R. 63). The libelant, however, said no one had given him any order not to open the door.

Specification of Error

It was error on the part of the United States Court of Appeals to affirm the decree of the District Court in this case upon the ground that libelant could lawfully seek and obtain a decree of indemnity in his favor upon the ground that his injuries had been caused by negligence for which petitioner was responsible.

POINT I

The decree in this case is erroneous because, under the circumstances shown to exist, libelant had no lawful right to seek, much less obtain, a decree in his favor.

It has been, apart from statutory enactments, a settled principle of maritime law for a long time that for personal injuries sustained aboard a vessel (any watercraft used as a means of transportation, as defined, 1 U. S. C., Sec. 3) in navigable waters of the United States by reason of negligence, involving no unseaworthiness of either the vessel or her appliances, a seaman is without a remedy against the owner for indemnity beyond maintenance and cure. Thus, in *Warner* v. *Goltra*, 293 U. S. 155, 158, it was said:

> "Congress knew that men employed upon a ship were without a remedy for negligence beyond their cure and maintenance, unless the injury was a consequence of unseaworthiness of the ship or a defect in her equipment."

Likewise, in this regard, in *Pacific Co.* v. *Peterson*, 278 U. S. 130, 134, it was said:

> "By the general maritime law of the United States prior to the Merchant Marine Act, a vessel and her owner were liable, in case a seaman fell sick, or was wounded in the service of the ship, to the extent of his maintenance and cure, whether the injuries were received by negligence

> or accident, and of his wages, at least so long as the voyage was continued, and were liable to an indemnity for injuries received by a seaman in consequence of the unseaworthiness of the ship and her appliances; but a seaman was not allowed to recover an indemnity for injuries sustained through the negligence of the master or any member of the crew. *The Osceola,* 189 U. S. 158, 175; *Chelentis* v. *Luckenbach S. S. Co.,* 247 U. S. 372, 380; *Carlisle Packing Co.* v. *Sandanger,* 259 U. S. 255, 258."

To the same effect in *Cortes* v. *Baltimore Insular Lines,* 287 U. S. 367, 370, it was said:

> "By the maritime law a seaman is without a remedy against the ship or her owners for injuries to his person, with two exceptions only. A remedy is his if the injury has been suffered as a consequence of the unseaworthiness of the ship or a defect in her equipment. • • • A remedy is his also if the injury has been suffered through breach of the duty to provide him with 'maintenance and cure'."

Whatever may have been the rule with respect to the applicability of the foregoing principles of maritime law to the relationship between a shipowner and the employees of an independent contracting stevedore prior to the decision of the case of *Seas Shipping Company* v. *Sieracki,* 328 U. S. 85, it seems abundantly clear they now apply to that relationship, so that, for personal injuries accidentally sustained by such an employee on board a vessel afloat in navigable waters in the performance of his customary work of loading or unloading cargo, no cause of action for indemnity arises

in his favor against the owner of the vessel, unless the injuries were at least partly caused by unseaworthiness of the vessel or by a defect in her appliances. For, as said in the *Seas Shipping Company* case:

> "It seems, therefore, that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the shipowner or a stevedoring contractor should not determine the measure of his rights."

In the *Seas Shipping Company* case it was also held that because the libelant there was performing the work of a stevedore, traditionally the work of seamen employed by the owner, the rights of the libelant on the one hand and the obligations of the owner on the other were to be measured, at least so far as practicable, by the maritime law applicable to the relation of owner and seaman, rather than upon the basis of any other relationship. That relation, with respect to the condition and use of a vessel under the maritime law, like the relation of master and servant with respect to the condition and use of land under the common law, has certain peculiarities which have given to seamen a somewhat different degree of protection than that which is given to other classes of business invitees. In some particulars the protection is greater; in others, less. (See comment g, Sec. 332, Vol. II, *Restatement of the Law, Torts*). While a seaman in such a relation is undoubtedly a business invitee of the owner of the vessel, the same as servant in performing work upon his master's land is a business invitee of the master, yet that circumstance, however, no more entitles a seaman to have his rights with respect

to the owner of the vessel measured by the maritime law applicable to business invitees of such owner of another class than it entitles a servant at common law to have his rights as to his master adjudged upon the law applicable to the master's business invitees of another class.

The Court of Appeals in its decision in this case (R. 94) indicated that, even though libelant under the decision in the *Seas Shipping Company* case was to be considered a business invitee within the same class as seamen employed directly by petitioner, he was nevertheless privileged to maintain his action as a business invitee of another class. In other words, in that situation, even if it could possibly exist, his contractual relationship with his employer, the contracting stevedore, would be a factor in the case, something which was expressly declared in the *Seas Shipping Company* case (Opinion, p. 97) to be a fortuitous circumstance which should not determine the measure of his rights. Clearly libelant's rights are to be measured solely by those accorded to a seaman, because he was "doing a seaman's work and incurring a seaman's hazards" (Opinion, p. 99, *Seas Shipping Company* case).

Furthermore, the Court of Appeals (R. 94) in its decision declared:

> "That it is most improbable that the Supreme Court, in adding to the stevedore's remedies those open to ordinary seamen, intended to deprive them of other pre-existing remedies."

Such a declaration, it is respectfully submitted, begs the question. The point in *Seas Shipping Company* case in respect to the stevedore's remedies was not a matter of either increasing or diminishing them, but simply

a matter of ascertaining and defining them. The fact that stevedores in prior suits may have either won or lost their cases upon the erroneous theory that they were not seamen appears much beside the point. As the law now stands, it clearly appears that stevedores on board a vessel in navigable waters in the performance of their work as such, are seamen and that their rights and remedies as to the owner of the vessel are to be measured solely upon that basis.

The Court of Appeals in its decision (R. 94) indicated that libelant could lawfully seek and obtain indemnity in this case because Congress in the enactment of the Longshoremen's and Harbor Workers' Act, 44 Stat. 1440, 33 U. S. C., Sec. 933 (a), had preserved the stevedore's rights and remedies against third persons responsible for his injuries. That Act, it is respectfully submitted, neither added to nor detracted from the remedies of a stevedore with respect to third persons. Whatever those remedies were at the time that Act took effect, or whatever they have since been determined to be, makes no difference so far as libelant is concerned.

CONCLUSION

The Writ should be granted.

Respectfully submitted,

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